IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

SUMMONS FOR JUDGMENT NO.52 OF 2006

IN

SUIT NO.1896 OF 2003

...

Prem Swiss Text(P) Ltd. ...Plaintiff

v/s.

Avik Duke & Anr. ...Defendants

...

Mr.S.N. Maroti for the Plaintiff.

Mr.Sunil Patel i/b Sunil & Co. for the Defendant No.1.

...

CORAM: D.K.DESHMUKH, J.

DATED: 12TH JUNE, 2006

P.C.:

1. The Plaintiff has taken out this summons for judgment against the Defendants Nos. 1 & 2. But since the Defendant No.2, according to the Plaintiff even after being served with the writ of summons has not filed appearance and has also not appeared, the summons for judgment is restricted as against the Defendant No.1 only.

2. The Plaintiff relies on various documents. Firstly, the purchase order dated 13-6-2000, which is admittedly signed by the Defendant No.1. The Plaintiff also relies on the invoices which are sent at the address of the Defendant No.1. The Plaintiff relies on the delivery challans which are signed by one M/s.Bombino. The Plaintiff also relies on E-mail which is admittedly sent by Defendant No.1 to the Plaintiff directing him to deliver the goods to the said M/s.Bombino. The documents relied on by the Plaintiff show that there was a written contract between the Plaintiff and the Defendant No.1 for sale of the goods by the Plaintiff to the Defendant No.2

and that the goods were supplied to the Defendant No.1.

3. Defendant No.1 does not deny that he placed the orders for goods. He also does not deny that the goods were supplied by the Plaintiff to the Defendant No.2. The defence of the Defendant No.1 is that the goods were supplied to the Falcon Management of which the owner is Defendant No.2 and that the Defendant No.1 was only acting as a middle man. According to the Defendant No.1 part payment has been made to the Plaintiff by father of the Defendant No.2. According to the Defendant No.1, e-mail dated 15-6-2000 and 16-10-2000 and 26-9-2000 which is referred to at serial No.23 of the list of documents shows that the Defendant No.2 promised the Plaintiff to make the entire payment and that the Defendant No.1 is not liable. According to the Defendant No.1, therefore, decree cannot be passed against the Defendant No.1. So far as documents produced on record are concerned, they show that the purchase order which has admittedly been signed by the Defendant No.1 no where mention that he has signed the document as a middle man. Perusal of the invoices shows that the address of the Falcon Management is shown as to be the

address of the Defendant No.1. It is the Defendant No.1, who instructed the Plaintiff to deliver the goods to Bombino by sending e-mail. This document conclusively establishes that it is the Defendant No.1 who is liable for making payment of the price of the goods to the Plaintiff. The Defendant No.2 may be jointly liable with the Defendant No.1 for making payment to the Plaintiff. It may also be true that the Defendant No.2 could have promised the Plaintiff to make the payment and the Defendant No.2 might also have absolved the Defendant No.1 from his liability to make the payment. But that will not wipe out the liability of the Defendant No.1 as against the Plaintiff. It is for the Plaintiff to proceed against the Defendant No.1 only or against the Defendants Nos. 1 & 2 jointly and severally. The present summons for judgment is directed only against the Defendant No.1. The document on record clearly establish the liability of the Defendant No.1. The defence of the Defendant No.1 that he was acting only as a middle man is not supported by any document. On the contrary the document shows that it is a false defence put up by the Defendant No.1. Summons for judgment is , therefore, granted. As the Defendant No.1 is not entitled to any leave to defend the suit,

the Plaintiff is entitled to decree against the Defendant No.1. So far as Defendant No.2 is concerned, he has been served with writ of summons. The learned Counsel appearing for the Plaintiff undertakes to file affidavit of service within one week from today. Defendant No.2 has chosen not to appear and therefore in the absence of Defendant No.2 in court, accepting averments in the plaint at face value, suit is liable to be decreed as against the Defendant No.2 also.

Suit is, therefore, decreed against both the Defendants in terms of prayer clauses (a) and (b). Refund for court fees as per rules.